

**ORIGINAL**

No. 86-652

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Supreme Court, U.S.
FILED
JAN 5 1987
JOSEPH A. SPANGLER JR.
CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

STATE OF MARYLAND,  
Petitioner

v.

STEVEN LAMONT CLARK,  
Respondent

ON WRIT OF CERTIORARI  
TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI

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Counsel for Respondent

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## REASONS FOR DENYING THE WRIT

### I.

Petitioner contends that the Court of Appeals of Maryland has held that a criminal defendant is entitled to the effective assistance of counsel for his co-defendant. (Pet. at 24.) In fact, the Court held that the trial court's action in forbidding consultation between counsel for Respondent and his co-defendant deprived Respondent's counsel "of valuable information and advice concerning the exercise of the peremptory challenges" and thus deprived Respondent of the effective assistance of counsel. (Pet. Apx. 14.) This holding is not in conflict with any decision of this Court nor with a decision of the highest court of any state or a decision of any United States Court of Appeals. See Rule 17. Apparently, the factual situation in this case is unique for Petitioner cites no similar case and Respondent is aware of none. This is perhaps to be expected as it is difficult to imagine any justification for forbidding consultation between counsel for co-defendants concerning matters of trial strategy. It is unlikely that many trial judges care to. Indeed, counsel in the trial court in the instant case informed the trial judge that he was acting contrary to the practice in the Circuit Court for Baltimore City, Maryland's busiest trial court.

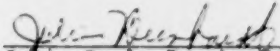
II.

Petitioner failed to raise in the Court of Appeals of Maryland the issue of whether the error in this case was harmless beyond a reasonable doubt. As the result of Petitioner's procedural default, the Court of Appeals declined to address the issue. (Pet. App. 17.) This issue is, therefore, not before this Court. Henry v. Mississippi, 379 U.S. 443 (1965).

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

  
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